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No. 909

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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1968

ELMER HAHN,

Petitioner,

v.

KENTUCKY ALCOHOLIC BEVERAGE CONTROL BOARD, and its individual members, HAROLD MOBERLY, A. B. MEADE and R. CAREY GRAHAM,

Respondent.

PETITION FOR RE-HEARING

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Respondent.

PETITION FOR RE-HEARING FOR PETITIONER, ELMER HAHN

May it please the Court:

Petitioner Elmer Hahn files this, his Petition for Re-Hearing.

GROUNDS

(1) The Petitioner's constitutional rights were violated in the hearing before the Alcoholic Beverage Control Board of Kentucky on April 2, 1965.

(2) Petitioner's constitutional rights were violated by the Alcoholic Beverage Administrator of the city of Covington and the Alcoholic Beverage Control Board on November 13, 1968.

(3) The Petitioner's constitutional rights were violated on April 5, 1966 when he was once again brought before the Alcoholic Beverage Control Board for violation at the Market Cafe.

(4) The Petitioner's constitutional rights were once again violated when he was cited by local authorities in September, 1968, and tried on December 13, 1968.

DISCUSSION

On April 2, 1965, a hearing was held before the Alcoholic Beverage Control Board of Kentucky concerning the appeal of the Petitioner for the revocation of his retail liquor license. The transcript of that hearing shows that an attorney made an appearance supposedly upon the behalf of the Petitioner and at that time plead the Petitioner guilty and asked for mercy. It is the Petitioner's contention that this attorney had never been retained by him and therefore should not have made an appearance on his behalf. Furthermore, the transcript of that hearing shows that the Petitioner was not in the hearing room and before the Board while the hearing was being conducted. This procedure was in violation of the Petitioner's constitutional right to face his accusers and to present a defense.

On November 13, 1968, agents of the Alcoholic Beverage Administrator of the city of Covington and the Alcoholic Beverage Control Board of Kentucky, entered the Petitioner's premises at the Holiday Hotel and at the Market Cafe to remove the Petitioner's liquor licenses and closed his business operations. Under the Court of Appeals decision of June 14, 1968, all of the agencies concerned had knowledge that the Petitioner still had the right to appeal that decision to a higher Court and they also had knowledge that he intended to do so. It is Pe-

titioner's contention that these agencies acted for purposes of discrimination rather than justice. They sought to directly injure the Petitioner by forcing him to lose his privilege of conducting his business while he was seeking a continuation of legal remedy.

On April 5, 1966, the Petitioner was once again brought before the Alcoholic Beverage Control Board for a violation at the Market Cafe. It is Petitioner's contention that the agency once again acted out of discrimination in order that they might establish the Petitioner as a habitual offender. To support this claim, the Petitioner points to the transcript of the hearing before the Board on June 2, 1966. According to the transcript, the violation occurred at 8 West 7th Street, Covington, Kentucky. Petitioner's license, which was revoked, was one which was issued to an address at 10 and 12 West 7th Street, Covington, Kentucky. Petitioner also points out that the agents, realizing their error, later came to the premises and drew up blueprints of the premises. These blueprints were never made available to the Petitioner.

The final point which Petitioner wishes to make concerns a supposed violation at his third and last place of business called Farmers Liquor Store. In September, 1968, Petitioner was charged with allowing gambling on the premises, even though he was not present at the time. On December 13, 1968, he was tried and convicted of this charge. Once again it is the Petitioner's contention that the agencies and local authorities involved have acted in complete discrimination in order to drive the Petitioner from any and all of his local businesses.

In summary, what the Petitioner has tried to explain in the above grounds and discussion is that the various agencies controlling the liquor traffic in the State of Kentucky, both local and statewide have acted arbitrarily

and discriminatorily in seeking to drive the Petitioner from conducting his business. They have gone without the limits as prescribed by the legislature and are subjecting the Petitioner to a form of punishment reserved only for him and not customarily inflicted upon similar offenders, in complete violation of the equal protection of the law within the meaning of the Fifth and Fourteenth Amendments. This discrimination has continued against the Petitioner even after he filed his Petition for Writ of Certiorari and for this reason Petitioner is raising these new grounds in this, his Petition for a Re-Hearing.

CONCLUSION

For the above mentioned reasons, the Petitioner prays that this Court will grant his Petition for a re-hearing.

Respectfully submitted,

WILLIAM F. HOPKINS and
PETER PANDILIDIS
Attorneys for Petitioner,
Elmer Hahn

CERTIFICATE

I, the undersigned counsel for Petitioner, Elmer Hahn, do hereby certify that the foregoing Petition for re-hearing is prepared and filed in good faith so that justice may be done, and not for the purpose of delay, and that the Petition for Re-Hearing is restricted to the grounds above specified.

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Counsel for Petitioner